IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3176 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ. STATE WEREHOUSING CORPN.

Versus

J D PANDYA

Appearance:

MR DC RAVAL for Petitioner

MR RD RAVAL for Respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/04/2002

ORAL JUDGEMENT

1. Heard the learned advocate Mr. D.C.Raval on behalf of the petitioner and learned advocate Mr. R.D.Raval on behalf of the respondent.

2. In the present petition the petitioner-corporation has challenged the award passed by

the Labour Court, Rajkot in Reference L.C.R. No.1143/85, dated 27th August, 1990, wherein the Labour Court has set aside the termination order dated 16th November, 1981 and granted reinstatement with continuity of service without back wages of interim period. This Court had issued rule on 8th July, 1991 and continued ad-interim relief granted earlier till further orders. At the time of issuing notice on 2nd May, 1991, the statement was made by the learned advocate Mr. Anand before this Court that respondent in the meantime be reinstated and placed in the list of occasional worker and be given same place therein which he was occupying prior to the impugned termination. In view of this statement, this Court had granted ad interim relief. The respondent-workman has filed affidavit in reply which is on record.

3. Learned advocate Mr. D.C.Raval appearing on behalf of the petitioner has raised contention that Labour Court has committed gross error in granting reinstatement to the respondent-workman. He also raised contention that respondent-workman's services were terminated in the year 1981 and he raised the dispute in the year 1985 i.e. after a period of 4 years and that aspect has also been overlooked by the Labour Court. He also submitted that the respondent was working as temporary and daily rated worker and not completed 240 days continuous service and even though Labour Court has come to the conclusion contrary to the record and that is the basic error committed by the Labour Court.

4. Learned advocate Mr. R.D.Raval has not remained present when the matter was taken up for hearing.

5. I have considered the submissions made by learned advocate Mr. Raval. Before the Labour Court the statement of claim was filed by the respondent vide Exh.3 and written statement was filed by the petitioner vide Exh.8. Thereafter, respondent-workman had produced certain documents vide Exh.13 to 20. Not only that the respondent-workman has produced documents from Exh.1 to 30 along with the statement of claim. Before the Labour Court the respondent was examined vide Exh.12. Thereafter, the petitioner had examined one witness vide Exh.26 and thereafter the Labour Court has considered the submissions of both the learned advocates and passed the impugned award. In respect to the first contention raised by the learned advocate Mr. Raval that services of the respondent were terminated on 16th November, 1981 and the dispute was raised by the respondent and referred for adjudication on 26th August, 1985. Therefore, the Labour Court has committed gross error in adjudicating

such delayed reference. Merely there was delay in raising the dispute, the dispute cannot be ceased but that aspect can be taken care of by the Labour Court at the time of granting the relief to the respondent-workman. This view has been taken by the Apex Court in the case of Mahavir Sinh vs. U.P. State Road Transport Corporation (1999) 2 C.L.R., page 7 wherein it is held that merely delay in raising the dispute, the dispute cannot be ceased, but the aspect of delay can be taken care of by the Labour Court at the time of granting relief to the respondent-workman. Therefore, such contention cannot be accepted. In respect to the second contention that respondent has not completed 240 days continuous services, for that Labour Court has considered various documents produced by the respondent-workman and oral evidence led by the respondent-workman as well as oral evidence led by the petitioner. According to the respondent-workman, he was appointed in July 1979 and he had worked for 10 months at Kandla and thereafter he worked for 6 months at Anjar and he was working on the post of clerk. He was receiving salary of Rs.258-60. The respondent has also deposed that after his termination, new person has been appointed in place of the respondent-workman and at the time of terminating services provisions of Section 25 (f) of the Industrial Disputes Act has not been complied with by the petitioner. No reasons or justifications were given by the petitioner for terminating services of the respondent-workman. The work which was performed by the respondent-workman was continue with the petitioner and respondent wrote a letter on 3rd December, 1983 to the petitioner to reinstate him in service. The said record was produced by the respondent before the Labour Court vide Exh.13 to 22. The respondent has also deposed that after his termination he made efforts to get job, but he could not get job, but he was earning Rs.200/- to Rs.250/- by doing miscellaneous work. It is necessary to note that the witness of the petitioner who is examined vide Exh.26 has admitted the facts that the respondent-workman has completed 240 days' continuous service by giving some break during that period or with some break respondent had completed 240 days' service. The said witness has also admitted that after termination of resspondent-workman, some new recruitment has been made by the petitioner, but at that occasion, respondent was not called by the petitioner. The Labour Court has considered the period of total service from 1979 to 1981 and as per Exh.16 wherein the working days of the respondent has been produced, the respondent-workman had worked for 324 days. Even though at the time of terminating services of the respondent-workman, the

petitioner has not complied with the provisions of Section 25 (f) of the Industrial Disputes Act. It is not a disputed fact before the Labour Court. Therefore, the Labour Court has considered both aspects that provisions of Section 25 (f) have been violated by the petitioner as well as provisions of Section 25 (H) are also violated. The Labour Court has also considered provisions of Section 66 of the Bombay Shops and Establishment Act as well as service rules of the petitioner that wherein it is provided that 30 days' notice is required to be given before terminating services of a workman who has completed one year's service. No such notice is given by the petitioner while terminating services of the respondent. The Labour Court has also considered gainful employment i.e. earning of Rs.200/- to Rs.250/- per month by doing miscellaneous work by the workman and which was admitted by the workman. The Labour Court also kept in mind the delay occurred in raising the dispute and ultimately thought it fit not to grant back wages for the interim period.

6. I have perused the entire award passed by the Labour Court. The Labour Court has given cogent reasons in respect of its conclusion. The observations made by the Labour Court are based on the oral as well as documentary evidence produced by both the parties and and that is the fact finding given by the Labour Court cannot re-appreciate the said fact finding given by the Labour Court. This Court having limited jurisdiction under Articles 226 and 227 of the Constitution of India. Therefore, according to my opinion, the Labour Court has not committed any error while passing such order. As there is no jurisdictional error, there is no procedural irregularity committed by the Labour Court which requires any interference while exercising the powers under Articles 226 and 227 of the Constitution of India. It is also necessary to note that at the time of issuing notice by this Court on 2nd May, 1991, a statement was made by the learned advocate for the petitioner that the respondent-workman will be reinstated in service on his original post. This is also one of the ground that as per the statement, respondent is required to be reinstated in service on his original post and more than 10 years have been passed by which time he could have been regularized in service. Therefore, considering this aspect also according to my opinion, no error is committed by the Labour Court while passing the award. The award passed by the Labour Court is just and proper and it does not require any interference by this Court. Therefore, there is no substance in the present petition and same is dismissed. Rule discharged. No orders as to

costs.

(H.K.Rathod, J.)

21-5-2002.

Further order :

Before signing the above order, learned advocate Mr. D.C.Raval sought permission and requested this Court to make further submissions and development in the matter. Permission granted.

This Court considered the submissions of Mr. D.C.Raval. In the present petition this Court has passed the order on 19th April, 2002, in the open Court and dismissed the petition filed by the petitioner. It is also necessary to note that at the time when the matter was heard, learned advocate Mr. R.D.Raval, who is appearing for the respondent remained absent and, therefore, no assistance was available to the Court from the respondent. Today, learned advocate Mr. D.C.Raval for petitioner submits before this Court that the dispute involved in the present petition is already settled between the parties in response to the application dated 1st December, 1994, given by the respondent-workman. In the said application the respondent-workman has requested the petitioner to give him regular permanent appointment on the post of Clerk and in that case he will withdraw all the pending proceedings against the petitioner, so also he will not claim any seniority or promotion in respect of the earlier order passed in favour of the respondent-workman. In response to the letter dated 1st December, 1994, submitted by the respondent-workman to the petitioner, before Board of Directors meeting held on 3rd December, 1994, the agenda was placed concerning request of the respondent-workman. The Board of Directors has passed the resolution accepting the request made by the respondent-workman in the said meeting. In pursuance of the resolution passed by the Board of Directors on 3rd December, 1994, the petitioner-corporation has issued an order on 9th January, 1995, in favour of the respondent-workman granting regular permanent appointment to the respondent-workman on the post of Clerk w.e.f. 16th January,1995. It was agreed between the parties that in view of the appointment order dated 9th January, 1995 whatever litigations are pending between the parties before any Court are required to be disposed of accordingly. Therefore, considering this application of the respondent-workman dated 1st December, 1994 and

resolution passed by the Board of Directors to the petitioner on 3rd December, 1994, so also the appointment order dated 9th January,1995 which are placed on record, learned advocate Mr. D.C.Raval requests this Court to dispose of the petition in aforesaid terms. The application of the respondent-workman dated 1st January, 1994, resolution of the Board of Directors dated 3rd December, 1994 and order dated 9th January, 1995 are taken on record. In the result the petition stands disposed of accordingly.

(H.K.Rathod, J.)

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